

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

DAVID FLORES, JR.,)	
Institutional ID No. 1350652,)	
SID No. 4406136,)	
Previous TDCJ No. 592367, 640667,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	5:09-CV-171-C
V.)	ECF
)	
ROBERT W. FORTNER, <i>et al.</i> ,)	
)	
Defendants,)	

ORDER

The United States Magistrate Judge entered a Report and Recommendation on October 20, 2010. Plaintiff filed objections and motion for appointment of counsel, which were signed and dated October 28, 2010.

This Court has made an independent review of the record in this case and finds that Plaintiff's objections should be overruled and the Magistrate Judge's findings, conclusions, and recommendation should be accepted and adopted; accordingly, both the excessive-use-of-force claim asserted against Defendant Alvarez and the retaliation claim asserted against Defendant Fortner should proceed.

The Court notes that Defendant Fortner has been served and filed his Answer; however, Defendant Alvarez has not yet been served with the complaint and thus has not had an opportunity to file an answer or other responsive pleading. On February 24, 2010, the United States Magistrate Judge ordered the United States Marshal to personally serve process and a copy of said Order and Plaintiff's Complaint upon Defendant Dominic H. Alvarez, who was

employed at the John T. Montford Unit of the Texas Department of Criminal Justice (TDCJ) but working at the Preston Smith Unit at the time of the incident giving rise to the complaint.

On March 8, 2010, the Deputy United States Marshal (DUSM) filed the USM-285 unexecuted as to Albarez with remarks describing his efforts to locate Albarez in order to effectuate service. Specifically, the DUSM noted that on February 26, 2010, a DUSM attempted to serve Albarez at the Montford Unit but was informed that Albarez had quit in 2007. The Montford Unit did not have a forwarding address, and his files had been sent to Huntsville. On March 1, 2010, the DUSM contacted Human Resources in Huntsville and was provided Albarez' name and date of birth but informed that there was no forwarding address on file. On March 2, 2010, the DUSM ran computer inquiries in order to locate Albarez' then-current address (including Department of Public Safety Driver's License records, etc.) and found no results.

The Court finds that the Texas Department of Criminal Justice shall have twenty (20) days from the date of this Order to provide the last-known address for Defendant Dominic H. Albarez, who was allegedly employed at the John T. Montford Unit but working at the Preston Smith Unit on or about July 25, 2007.

Upon receipt of TDCJ's response to this Order, Defendant Albarez' last-known address shall be held under seal and for the Court's in-camera examination only, subject to further orders of this Court.


The address of Defendant Albarez shall not be disclosed in any manner to Plaintiff, and if any documents containing this address, including service of summons, are sent to Plaintiff, such information shall be redacted.

The Clerk shall mail a copy of this Order via certified mail, return receipt requested, to the attention of Laurie Smock, or Successor, Employee Services, Texas Department of Criminal Justice Human Resources Division, #2 Financial Plaza, Suite 600, Huntsville, Texas 77340, and to Senior Warden Joseph Wilson, or Successor, John T. Montford Unit - TDCJ, 8602 Peach Street, Lubbock, TX 79404.

Finally, the Court finds that Plaintiff has not shown any inability to set forth his claims for relief or that extraordinary circumstances are involved which would justify the appointment of counsel. Therefore, Plaintiff's motion for appointment of counsel should be DENIED.

SO ORDERED.

Dated March 23, 2011.



SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE